

ISSUE DATE: September 5, 1995

DOCKET NO. E-002/M-95-244

ORDER GRANTING VARIANCES AND APPROVING FAC TARIFF AS MODIFIED

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm
Tom Burton
Joel Jacobs
Marshall Johnson
Dee Knaak

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Petition of
Northern States Power Company to
Amend the Terms of its Electric
Fuel Adjustment Clause

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PROCEDURAL HISTORY

On March 22, 1995, Northern States Power Company, Inc. (NSP or the Company) filed a petition to amend its electric fuel adjustment clause (FAC).

On May 1, 1995, the Mankato Area Environmentalists (MAE) filed comments on NSP's petition.

On May 5, 1995, the Minnesota Department of Public Service (the Department) and the Residential Utilities Division of the Office of the Attorney General (RUD-OAG) each filed comments on NSP's petition.

On May 8, 1995, NSP replied to MAE's comments.

On May 16, 1995, NSP replied to the Department's and the RUD-OAG's comments.

On June 1, 1995, the Department replied to the comments of MAE and the RUD-OAG.

On August 10, 1995, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

I. NSP'S PETITION

NSP proposed to revise its fuel clause rider to

1. remove language which would restrict the flow-through of purchased wind power which does not meet economic dispatch;

2. permit the flow-through of the total cost of wind purchases, capacity costs as well as wind energy costs; and
3. clarify that the cost of biomass, refuse-derived fuel (RDF), wood, and other non-fossil fuels used to generate electricity are appropriately included in the rider.

Finally, NSP requested that the Commission grant variances to the fuel clause rules for prior months in which it had included wind energy, capacity, and non-economic wind energy in its fuel adjustment clause. Specifically, the Company requested that the Commission grant a variance from March of 1994 to the effective date of the revised fuel clause rider. In addition, the Company requested fuel adjustment clause (FAC) recovery of RDF and wood costs, if appropriate..

II. THE PARTIES' POSITIONS

A. The Department

The Department noted that NSP's proposed modification to its FAC is an attempt to bring the tariff into synchronization with the Company's current and near future practices .

The Department argued, however, that the revised tariff would be in violation of the Commission's FAC rules in several respects. For the Commission to be able to approve the Company's proposal, the Department indicated that the Commission would have to grant a variance of its FAC rules, not only for the *historic* costs passed through the FAC in violation of the tariff and the Commission rules, but to give *future* effect to the tariff.

The Department recommended that the Commission grant the Company a one year variance to FAC rules¹ and approve NSP's proposed tariff with the addition of a sentence that had been part of the Company's previous tariff but which had been inadvertently omitted from its proposed revision.²

¹ Minn. Rules, Parts 7825.2400, subpt. 9 and 7835.4000. The Department clarified that the FAC rules contained no economic dispatch requirement and that, hence, no variance was required to allow the Company to recover for the purchase of wind generated energy regardless the economic dispatch issue.

² The sentence identified by the Department as inadvertently omitted from the revised tariff was: "The kilowatt-hour sales shall be all kilowatt-hours sold excluding intersystem sales."

B. The RUD-OAG

The RUD-OAG initially argued that the Company's filing was incomplete and should be rejected. After receiving additional information from the Company, the RUD-OAG changed its position and supported approving the Company's proposal along with granting the variances required to do so. The RUD-OAG stated that **retroactive** as well as prospective variances were needed with respect to

- ♦ NSP's past and future collection of wood, biomass and RDF costs through the FAC and
- ♦ the Company's past and future collection of full energy payments in wind contracts having no capacity component through the FAC.

The RUD-OAG also felt it was important for the Commission to preserve the opportunity to review the prudence of these contracts in the Company's next rate proceeding.³

C. Mankato Area Environmentalists (MAE)

MAE requested that the implementation of the proposed tariff be suspended and that the matter be sent for contested case hearing. MAE requested the Commission to order a thorough investigation into this matter to

- ♦ develop rules and procedures to prevent subsidies of NSP's unregulated subsidiaries,
- ♦ investigate whether prior subsidies have occurred through the fuel clause,
- ♦ recover those subsidies and
- ♦ ensure fair bidding in developing alternate energy sources.

III. COMMISSION ANALYSIS

A. Alternative Proceeding: Rulemaking or Contested Case

MAE recommended a contested case proceeding or investigation, culminating with a revision of the Commission's rules to protect against cross-subsidy and to protect against inappropriate bidding by NSP against others for wind resources.

³ See footnote 4 below.

No such initiative appears warranted. The Commission has reviewed RDF costs on more than one occasion without identifying cross-subsidy. No new evidence of cross-subsidy has been presented. It appears that the Commission's current rules (accounting measures and procedures) are adequate to discourage cross-subsidy and identify it should it arise.

B. NSP's Collection of Costs for RDF, Biomass, and Wood Through the FAC

NSP seeks to change its FAC rider language to clarify that costs of RDF, wood, and biomass may be collected through the FAC. Further, the Company seeks any necessary variance, retroactively to 1987 (when the Company first began collecting these costs through the FAC) and prospectively.

Prospective Variance

The Commission finds that a variance is needed to authorize recovery of the cost of these fuels through the FAC on a prospective basis. Minn. Rules, Part 7825.2500 provides that automatic adjustments must encompass "changes in the cost of **fuel consumed** in the generation of electricity" and Minn. Rules, Part 7825.2400, subp. 9 defines the cost **of fuel consumed** as the cost of fossil fuel and nuclear fuel. It is plain, therefore, that recovery of the cost of other fuels (such as RDF, wood, and biomass) through the FAC is not authorized.

Further, the Commission finds that the criteria established in Minn. Rules, Part 7829.3200 for granting such a variance are present. The Commission finds that these costs are indistinguishable in relevant characteristic from the fuels specifically named in the rule: fossil fuels and nuclear fuel. It would, therefore, impose an excessive burden upon NSP to prevent FAC recovery of those costs. Second, granting the variance prospectively would not adversely affect the public interest. In making this finding, the Commission notes that effective regulation is unimpaired for the following reasons:

- ▶ all fuel contracts are subject to reasonableness reviews in rate cases⁴

⁴ Contrary to the suggestion by the RUD-OAG noted above on page 3, the Commission need take no special action to "preserve" review of such contracts for reasonableness in rate cases. Prudence reviews are not waived if not specifically "preserved" in Orders such as this, as the RUD-OAG's recommendation appears to suggest. They are part of the on-going structure of utility regulation in Minnesota.

- annual reconciliation of FAC charges is filed and reviewed
- the variance is limited to 12 months
- any request for renewal of the variance will allow for assessment of any adverse impact which may be identified.

On the other hand, refusal to grant the variance could impede a beneficial development. Inability to collect the cost of these fuels through the FAC could retard their use, a use which could have substantial ecological or other social benefit. Finally, there is no statute or federal law prohibiting the grant of such a variance.

Accordingly, the Commission will grant NSP a prospective variance as requested (from the provision of the FAC rules which limits FAC recovery to the costs for fossil and nuclear fuels) for a period of one year.

Regarding the specific tariff language replacing the restriction to fossil fuel, NSP initially proposed broad language: "cost of fuel consumed" which would authorize FAC recovery of the costs of **any** fuel used to generate electricity, whether that fuel is used or known at this time. The RUD-OAG raised a concern about this broad language and recommended that the tariff identify the fuels more specifically. The Commission will use a conservative approach on this and authorize FAC recovery with respect to the specific additional fuels presented in this docket: wood, RDF, and biomass. Further, as a general concern, the Commission notes that the tariff page is a document available to the public. Clear and specific language expressing how rates are currently calculated is more informative than broad generic language.

Retroactive Variance

Regarding a retroactive variance to legitimate the Company's collection of the cost of these additional fuels since 1987, the Commission believes that such an action is unwarranted. Besides being a very unusual action, it raises the issue of retroactive ratemaking. Moreover, the Company's collection of costs for these fuels has been open and subject to Commission review in the past:

Wood: See In the Matter of a Request by Northern States Power Company for Approval of a Contractual Agreement Between Northern States Power Company and NORESCO for the Washington County Steam Supply Project, Docket No. E-002/M-86-755. In that matter, NSP sought approval of an affiliated interest agreement in which NSP's non-utility subsidiary purchased wood by-products from Andersen Windows and sold them to NSP for fuel in the King plant. In its

report to the Commission, the Department stated:

NSP will enter the cost of the wood by-product purchased from NORENCO in Account 151, and pass this cost on to ratepayers through the Fuel-Clause Adjustment.

RDF: In two prior rate proceedings, RDF fuel was included in the fuel clause base. No party objected to this.

In these circumstances, then, despite the clarity of the rule language as found by the Commission in this Order, the Commission will simply grant the variance prospectively (thereby authorizing future collection of these costs) and not seek to modify what has occurred in the past.

C. Collection of Costs of Purchasing Wind-Derived Power Through the FAC

The price of purchased power is usually composed of two elements: an energy charge and a capacity charge. In its petition, NSP proposed that its fuel clause rider be modified to permit the inclusion of the total cost of wind purchases, capacity and energy.

However, the Commission's rules generally do not allow for collection of *capacity* charges through the FAC. The only exception provided is Minn. Rules, Part 7835.4000 which permits the inclusion of costs for energy and *capacity* purchased from QFs with a capacity of under 100 kW. Since the wind-derived power in question comes from a facility whose capacity is larger than 100 kW, the exception provided in Minn. Rules, Part 7835.4000 does not apply. Accordingly, approval of the Company's proposed tariff change providing for collection of the capacity costs associated with these purchases would require a variance from the FAC rule.

The fact that NSP's wind power purchase contracts do not separate the wind purchases into capacity or energy components would not preclude the Commission from finding, on the basis of an appropriately developed record, an amount for *capacity* which would enable it to enforce the rule's "energy costs only" restriction. The Commission is not bound by the form parties choose to characterize or present matters, but goes to the substance of the matter. However, the record in this case provides no basis for such a finding.

In these circumstances, designating a portion of the wind costs as capacity costs would be arbitrary and restricting the Company's recovery through the FAC to such "energy" costs would impose an excessive burden upon it. Second, for much the same reason, granting a variance in this case from the "energy costs only" requirement of the FAC rule would not adversely affect the public interest. Again, as with the additional fuels variance discussed above, granting this variance would not impair effective regulation of this subject. Substantial means to review would continue:

- all fuel contracts are subject to reasonableness reviews in rate cases
- annual reconciliation of FAC charges is filed and

reviewed

- ▶ the variance is limited to 12 months
- ▶ any request for renewal of the variance will allow for assessment of any adverse impact which may be identified.

Finally, there is no statute or provision of federal law prohibiting the grant of such a variance.

In sum, the criteria for granting a variance⁵ are met and the Commission will grant the variance for a period of one year, as with the variance regarding the types of fuel whose costs will be allowed to be recovered through the FAC. See above at page 4.

The question of a retroactive variance with respect to NSP's past practice in this regard was raised. Since March 1994, NSP has been including the entire cost of purchasing wind-derived power in its FAC. The Company acted in the open, reporting its practice with respect to wind costs in its annual FAC report. As with retroactivity of the fuel question variance, the Commission finds no need to examine this past practice.

D. Economic Dispatch

NSP's previous tariff language restricted FAC collection of purchased energy costs to purchases made on the basis of *economic dispatch*, i.e. purchases of power (when needed to meet anticipated demand) from the lowest cost source available. In its petition, the Company proposed tariff language authorizing FAC collection of purchased energy costs from qualifying facilities (QFs) and wind energy and capacity purchases whether or not those purchases occur on an economic dispatch basis.

NSP argued that the economic dispatch restriction should not be applied to wind energy.

The Company noted that the purchases of wind energy are largely the result of legislative directive, that wind energy fuel savings are reflected in reduced fuel costs, and that cost fluctuations occur at a frequency not easily captured in the rate process. No party opposed the Company's request.

The Commission notes that while economic dispatch is generally a sound policy which serves to contain FAC charges, there are additional considerations in this case. For reasons cited by the Company, the purchase amount and timing are not within the Company's total control. In these circumstances, the Commission finds that it would be unfair to use an economic dispatch as an across-the-board policy to prevent the Company from recovering

⁵ Minn. Rules, Part 7829.3200.

purchases of wind power.

Accordingly, the Commission will approve the Company's requested tariff language revision in this regard.

IV. COMMISSION ACTION

Based on the foregoing analysis, the Commission will grant the above-discussed prospective variances and approve NSP's proposed tariff language as modified. For specific modifications, see Ordering paragraph 2.

ORDER

1. In connection with its proposed tariff, Northern States Power Company (NSP or the Company) is granted a one-year prospective variance with respect to the following:
 - a. the definition of "Cost of fuel consumed in the generation of electricity" as the cost of fossil and nuclear fuels (Minn. Rules, Part 7825.2400, subp. 9); and
 - b. provision that capacity charges may be collected through the of the FAC only if the purchase in question is from a QF having under 100 KW capacity (Minn. Rules, Part 7835.4000).
2. NSP's proposed tariff language is approved as modified in this Order. Specifically, the modifications are:
 - a. NSP's phrase "cost of fuel consumed" is to be replaced by "cost of fossil, nuclear, biomass, wood and refuse-derived fuel (RDF)"; and
 - b. A sentence inadvertently omitted from the proposed tariff will be reinstated: "The kilowatt-hour sales shall be all kilowatt-hours sold excluding intersystem sales."
3. Within 10 days of this Order, NSP shall file a corrected final copy of the approved tariff language with the Commission and serve a copy of that filing on each of the parties to this matter.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)